

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Engineering and Construction Management Department  
**AGENDA DATE:** July 17, 2012

**CONTACT PERSON/PHONE:** R. Alan Shubert, 915-541-4423

**DISTRICT AFFECTED:** City Wide

**SUBJECT:**

That the City hereby adopts the City of El Paso Design-Build Procurement Policy for City facilities and City civil works projects and designates the City Engineer to determine, before advertising, which alternative project delivery method for construction provides the best value to the City.

**BACKGROUND / DISCUSSION:**

Design-build was authorized as an alternative project delivery method by resolution of City Council on July 20, 2004. Design-Build has the potential to reduce costs and expedite construction schedules when established as the method that will produce the best value for a selected City project. The proposed resolution requests that City Council formally approve the policy for use of the Design-Build method. The resolution also clarifies how the determination will be made to use this specific procurement method. The proposed policy follows the latest statutory requirements for facilities and civil works qualifying projects. Any Public-Private Partnership (P3) proposal would use Design-Build as the procurement method for construction; however, the policy is written where the City could use this method on other projects not involving P3 as well.

**PRIOR COUNCIL ACTION:**

Resolution authorizing the use of Design-Build as an alternative project delivery method on July 20, 2004.

**AMOUNT AND SOURCE OF FUNDING:**

**BOARD / COMMISSION ACTION:**

(N/A)

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:** \_\_\_\_\_



*Information copy to appropriate Deputy City Manager*

## RESOLUTION

**WHEREAS**, on July 20, 2004, the City Council adopted a resolution approving the use of alternate project delivery methods for construction projects pursuant to Section 271.113 of the Texas Local Government Code (now Section 2267 of the Texas Government Code), including design-build and designated the Director of Purchasing to determine, before advertising, which of the methods provides the best value to the City;

**WHEREAS**, the Council resolution requires staff to amend Title 2 (Administration and Personnel) of the City Code to establish selection procedures for design build firms; and

**WHEREAS**, on December 13, 2005 by Ordinance No. 16230, the Council deleted Title 2 (Administration and Personnel), Chapter 2.88 (Selection Procedures for Architects, Engineers and Land Surveyors) of the City Code in its entirety; and

**WHEREAS**, in lieu of such Code amendment, staff has proposed that the Council adopt this resolution approving the City's Design-Build Procurement Policy for City facilities and City civil works projects, attached as *Exhibit A* to this Resolution, and designate the City Engineer to determine, before advertising, which alternative project delivery method for construction provides the best value to the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City hereby adopts the City of El Paso Design-Build Procurement Policy for City facilities and City civil works projects which is attached hereto as *Exhibit A* and incorporated herein by reference, and designates the City Engineer to determine, before advertising, which alternative project delivery method for construction provides the best value to the City.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

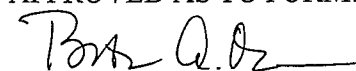
**CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

ATTEST:


\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros  
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E. City Engineer  
Engineering and Construction Management

**EXHIBIT A**

**THE CITY OF EL PASO  
DESIGN-BUILD PROCUREMENT POLICY**

**CITY OF EL PASO**  
**ENGINEERING AND CONSTRUCTION MANAGEMENT DEPARTMENT**  
**DESIGN-BUILD PROCUREMENT POLICY**

**I. Introduction**

On July 20, 2004 the El Paso City Council adopted a resolution authorizing design-build as an alternative project delivery method for the construction, rehabilitation, alteration or repair of a facility pursuant to the provisions of Chapter 271 of the Texas Local Government Code (now Chapter 2267 of Texas Government Code).

Design-Build is a method of construction procurement under which both design and construction services are contracted through one entity, either a joint venture between a design consultant and a contractor or a single entity with both capabilities. Design-Build has the potential to reduce costs and expedite construction schedules when established as the method that will produce the best value for a selected City project.

State law allows the City to use Design-Build for construction, rehabilitation, alteration, or repair of a facility (i.e. vertical construction) and of civil works projects (i.e. horizontal projects). The procurement procedures are generally the same but there are some variations in the procurement procedures for each which are highlighted in this Policy.

A design-build firm selected for any City project must be a sole proprietorship, partnership, corporation or other legal entity or team that includes an architect or engineer and a construction contractor.

The following policy outlines: 1) Pre-requisites for selecting Design-Build as the procurement method; 2) The procurement process for Design-Build projects; and 3) Post-selection procedures that the Engineering & Construction Management Department will administer.

**II. Prerequisites for method selection**

The City Engineer shall use the following criteria to first determine whether Design-Build is the appropriate procurement method by examining:

- A. to the extent that the City can adequately define the project requirements;
- B. time constraints for the delivery of the project;
- C. ability to ensure competitive procurement can be held; and
- D. the City's capability to manage and oversee the project, including availability of experienced City employees or outside consultants who are familiar with Design-Build method of a facility or civil work, as applicable. The City Engineer may at his discretion engage professional advisors, attorneys or consultants having appropriate experience in analyzing design-build proposals to assist in making his determination that this method will produce the best value for the City in accordance with the applicable city procurement policies.

In addition, the following criteria shall be also considered by the City Engineer in making this determination:

- **Qualifying Facility Projects:** The City may use the design-build method for the construction, rehabilitation, alteration or repair of a facility, which is a building or associated structure that is an improvement to real property, *but not including* Civil Works Projects (which are permitted under other law as described below).
- **Qualifying Civil Works Projects:** The City may use Design-Build for the construction, rehabilitation, alteration or repair of the following Civil Works Projects:
  - A. Roads, streets, bridges, utilizes, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage and flood control projects or transit projects;
  - B. Types of projects or facilities related to those described by paragraph (a) and associated with civil engineering construction; and
  - C. Buildings or structures that are incidental to projects or facilities that are described by paragraphs (a) and (b) and that are primarily civil engineering construction projects.

In addition, Civil Works projects must be single integrated projects and may not include aggregated projects at multiple locations, provided, however, that a bus rapid transit system as defined by applicable law may be treated as a single integrated project and a water treatment plant, including a desalination plant, that includes treatment facilities, well fields and pipelines is a single integrated project.

**Limitation of number of Civil Works projects-** In accordance with state law, before September 1, 2013 the City may use the Design-Build process for up to three (3) projects per fiscal year. After September 1, 2013, the City may use the Design-Build process for up to six (6) Civil Works projects per fiscal year.

The El Paso Water Utilities (Public Service Board) may have one project per fiscal year that if selected will count toward one of the projects the City is allowed. Additional Design-Build projects may be allocated to EPWU by the City Engineer if the City will not use its allocation during any fiscal year.

- **Historically Underutilized Business (HUB)** program requirements shall apply

If the preceding conditions are met, the City Engineer shall notify the City Council through the City Manager that the Design-Build method will be used for a Qualifying Facility or Civil Works Project.

For either a Facility Design-Build project or a Civil Works Design-Build Project, the City shall select or designate an engineer or architect independent of a design build firm to act as its representative for the duration of the work on a Design-Build project. The City's representative shall either be a full-time engineer or architect employed by the City or an engineer or architect under contract to the City and selected on the basis of demonstrated competence and qualifications as provided by Section 2254.007 of the Local Government Code.

A design-build firm selected for any City project must be a sole proprietorship, partnership, corporation or other legal entity or team that includes an architect or engineer and a construction contractor.

### **III. The Procurement Process – Facility Design-Build Project**

The City shall prepare a request for qualifications (RFQ) for any Design-Build project for a facility, including a design criteria package for the Design-Build project.

#### **A. Request for Qualifications**

1. The City shall prepare a request for qualifications (RFQ) for a Facility Design-Build Project that includes a scope of services that includes at a minimum the following information:
  - a. Information on Facility project site
  - b. Scope of work
  - c. Budget
  - d. Special Systems
  - e. Schedule
  - f. Selection criteria
  - g. Other information that may assist potential respondents in submitting proposals for the project
2. The RFQ for a Facility shall also include a design criteria package that includes more detailed information on the project to permit a design-build firm to prepare a responses to the RFQ and to provide any additional information requested. The design criteria package must specify criteria the City considers necessary to describe the project and may include the following:
  - a. Legal description of the project site
  - b. Survey information
  - c. Interior space requirements
  - d. Special material requirements
  - e. Material quality standards
  - f. Conceptual criteria
  - g. Special equipment requirements
  - h. Cost or budget estimates
  - i. Time schedules
  - j. Quality assurance and control requirements
  - k. Site development requirements
  - l. Applicable codes/ordinances
  - m. Utility provisions
  - n. Parking requirements
  - o. Other requirements, as applicable, such as geo-technical baseline report, or other information providing the design build firm minimum geotechnical design parameters to submit a proposal shall be provided by the City.

The City may request additional information – either as part of the initial RFQ or as additional information once the short-list of qualifying firms is selected - regarding the demonstrated competence and qualifications, considerations of safety and durability of the project, the feasibility of implementing the project as proposed, and the ability of the

design-build firm to meet schedules or costing methodology. "Costing Methodology", as defined by state law, means an design-build firm's policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.

3. The RFQ for a Facility Design-Build Project shall clearly identify the evaluation criteria and scoring system and relative weight thereof. The criteria shall be established to meet the specific needs of a particular project and will include the following evaluation factors, as required by law:
  - a. Experience
  - b. Technical competence
  - c. Capability to perform
  - d. Past performance (proposer and team members)
  - e. Conceptual project plan (includes approach to public involvement, scheduling and quality)
  - f. Financial capacity of design-build firm
  - g. Other information as applicable

*Cost-related or price-related factors may not be considered as part of selection criteria.*

4. Detailed instructions for preparing the submittal of Statement of Qualifications (SOQ) in response to the RFQ for a Facility Design-Build project shall be formatted in the manner listed in the Instructions to Design-Build Firms. *See Instructions to Design-Build Firms for further detail.*
5. Prior to the posted deadline for qualification statements, the City shall conduct an industry review workshop to be advertised on the RFQ document.
6. The City Engineer or designee shall assign the members of the Design-Build Selection Committee.
7. The submitted SOQs shall be distributed to the Selection Committee for their review and recommendations. The Selection Committee shall review the written SOQ submittals and submit a short-list of the design-build firms that provide the best value for the City on the basis of the published selection criteria and its ranking evaluations to the City Engineer or designee.
8. The City Engineer or designee shall receive and tabulate all score sheets based on the published selection criteria in the RFQ document. Each design-build firm shall be ranked 1, 2, 3, etc. The sum of rankings shall be used as the official score.
9. The City Engineer or designee shall notify the no more than five (5) top-ranked design-build firms that they have qualified to submit proposals that contain additional information and, at the City's election, to interview for final selection of a design-build firm for the scoped project..
10. The Selection Committee may conduct oral interviews and listen to design-build firms' presentations and will assign points to the short-list of firms based upon which provides the best value for the City on the basis of the selection criteria in the RFQ and the Committee's ranking evaluations.
11. After evaluating and scoring each design-build firm's response to RFQ proposal and the results of any interview, the City will select the highest ranked design-build firm.

12. The City Engineer or designee shall notify the highest ranked design-build firm that the City will commence contract negotiations and schedule negotiating meetings as appropriate.
13. The City's shall hold scoping meeting(s) and conduct fee negotiations with the selected firm.
14. If the City is unable to negotiate a satisfactory contract with the selected firm, the City shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of selection ranking until a contract is reached or negotiations with all ranked firms end.
15. Any final design-build contract with the selected firm shall be posted for the award of the contract by the City Council and shall not be effective until the Council approves such contract and authorizes its execution.

#### **IV. The Procurement Process – Civil Works Design-Build Project**

The process for a Civil Works Design-Build project shall be based upon a two-step process: 1) a request for qualifications (RFQ) to qualify design-build firms; and 2) request for proposals (RFP) based on technical and cost proposals.

A Civil Works Design-Build project must be a single integrated project and may not include aggregated projects at multiple locations, provided, however, that a bus rapid transit system as defined by applicable law may be treated as a single integrated project and a water treatment plant, including a desalination plant, that includes treatment facilities, well fields and pipelines is a single integrated project.

Independently of the selected design-build firm, the City shall provide staff or contract for (in accordance with Professional Services Procurement statutes) inspection services, construction materials engineering testing and verification testing services, as necessary for the acceptance of the Civil Works project by the City.

##### **A. Phase 1: Request for Qualifications**

The City shall prepare a request for qualifications (RFQ) for any Design-Build project for any Civil Works, including a design criteria package for the Design-Build project.

1. The City shall prepare a request for qualifications for a Civil Works Design-Build Project that includes a scope of services that includes at a minimum the following information:
  - a. Information on Civil Works project site
  - b. Scope of work
  - c. Budget
  - d. Special Systems
  - e. Selection criteria
  - f. Schedule
  - g. Selection criteria
  - h. Other information that may assist potential respondents in submitting proposals for the project
2. The City shall clearly identify the evaluation criteria and scoring system and relative weight thereof in the RFQ. The criteria shall be established to meet the specific needs



of a particular project and will include the following evaluation factors, as required by law:

- a. Design-build firm Experience
- b. Technical competence
- c. Capability to perform
- d. Past performance (proposer and team members)
- e. Other information as applicable

*Cost-related or price-related factors may not be considered as part of selection criteria for the RFQ stage.*

Each design-build firm responding to a Civil Works project RFQ must select or designate each engineer that is a member of its team based on demonstrated competence and qualifications, as required by the professional services procurement statutes and certify that each selection was based on demonstrated competence and qualifications as required by such law.

3. Detailed instructions for preparing the submittal of Statement of Qualifications (SOQ) in response to the RFQ for a Civil Works Design-Build project shall be formatted in the manner listed in the RFQ Instructions to Civil Works Design-Build Firms. *See RFQ Instructions to Civil Works Design-Build Firms for further detail.*
4. Prior to the posted deadline for qualification statements, the City shall conduct an industry review workshop to be advertised on the RFQ document.
5. The City Engineer or designee shall assign the members of the Design-Build Selection Committee.
6. The submitted SOQs shall be distributed to the Selection Committee for their review and recommendations. The Selection Committee shall review the written SOQ submittals and submit a short-list of the design-build firms that provide the best value for the City on the basis of the published selection criteria and its ranking evaluations to the City Engineer or designee.
7. The City Engineer or designee shall receive and tabulate all score sheets based on the published selection criteria in the RFQ document. Each design-build firm shall be ranked 1, 2, 3, etc. The sum of rankings shall be used as the official score.
8. The City Engineer or designee shall notify the selected qualified design-build firms to submit proposals that contain additional information and, at the City's election, to interview for final selection of a design-build firm for the scoped project.

#### **B. Phase 2: Request for Proposals**

1. The City shall request Proposals from the qualified design-build firms. A firm must submit a sealed technical proposal and a separate sealed cost proposal not later than the 180<sup>th</sup> day after the date the City makes a public request for the proposals from selected firms. The RFP must include:
  - a. A design criteria package
  - b. A geotechnical or baseline report or other information that provides the design-build firm minimum geotechnical design parameters to submit a proposal
  - c. Detailed instructions for preparing the technical proposal and the items to be included, included a description of the form and level of drawings expected

- d. The relative weighting of technical and price proposals and the formula by which the proposals will be evaluated and ranked.

The City may offer to an unsuccessful design-build firm a stipend for the preliminary engineering costs associated with the development of the unsuccessful proposal. The stipend must be one-half of one percent (0.5%) of the contract amount and must be specified in the initial RFP, as further described in Section V of this policy.

2. The RFP for a Civil Works project shall also include a design criteria package that includes more detailed information on the project to permit a design-build firm to prepare a responses to the RFQ and to provide any additional information requested. The design criteria package shall specify criteria the City considers necessary to describe the project and may include the following, as appropriate:
  - a. Cost or budget estimates
  - b. Information about the project site
  - c. Performance criteria
  - d. Special material requirements
  - e. Material quality standards
  - f. Initial design calculations
  - g. Known utilities
  - h. Capacity requirements
  - i. Quality assurance and quality control requirements
  - j. The type, size and location of structures
  - k. Notice of any ordinances, rules or goals adopted by the City relating to awarding contracts to historically underutilized businesses
  - l. Other requirements, as applicable
3. **The technical proposal** is a component of the RFP and shall address:
  - a. Project approach
  - b. Anticipated problems
  - c. Proposed solutions to anticipated problems
  - d. Ability to meet schedules
  - e. Conceptual engineering design
  - f. Other information requested by the City
4. Detailed instructions for preparing the technical proposal, description of the form and level of completeness of drawings expected and a geo-technical baseline report, or other information providing the design build firm minimum geotechnical design parameters to submit a proposal, and the format for such proposal shall be provided by the City. *See RFP Instructions to Civil Works Design-Build Firms for further detail.*
5. Prior to the posted deadline for proposals, the City shall conduct an industry review workshop with the short-listed design-build firms to be advertised on the RFP document.
6. The City shall first open, evaluate and score each responsive technical proposal on the basis of the criteria described in the RFP and assign points on the basis of the weighting specified in such RFP. The City shall select the design-build firm in accordance with the formula provided in the RFP. The City may reject as nonresponsive any firm that makes a significant change to the composition of its firm as initially submitted under the phase one RFQ.

7. The City Engineer or designee shall assign the members of the Design-Build Selection Committee.
8. The submitted proposals shall be distributed to the Selection Committee for their review and recommendations. The Selection Committee shall review the written proposals, including each firm's technical proposal and cost proposal.
9. The Selection Committee shall conduct oral interviews and listen to firm presentations and will assign points based on the selection criteria indicated on the RFP.
10. After evaluating and scoring each responsive technical proposal and cost proposal, the City will select the highest ranked design-build firm for the Civil Works project.
11. The City Engineer or designee shall notify the highest ranked design-build firm that the City will commence contract negotiations and schedule negotiating meetings as appropriate.
12. The City's Project Manager and Program Manager shall hold scoping meeting(s) and conduct fee negotiations with the selected firm.
13. If the City is unable to negotiate a satisfactory contract with the selected firm, the City shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of selection ranking until a contract is reached or negotiations with all ranked firms end.
14. A final design-build contract shall be posted for the award of the contract by the City Council and shall not be effective until the Council approves such contract and authorizes its execution.

**V. Stipend for Unsuccessful Civil Works Design-Build Firms.**

1. Unless a stipend is paid to the Civil Works design-build firms submitting a proposal to the City, the design-build firm retains all rights to the work product submitted in a proposal.
2. The City may offer to an unsuccessful design-build firm a stipend for the preliminary engineering costs associated with the development of the unsuccessful proposal. The stipend must be one-half of one percent (0.5%) of the contract amount and must be specified in the initial RFP. If the offer is accepted and paid, the City may make use of any work product contained in the proposal, including the techniques, methods, processes and information contained in the proposal. The use by the City of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the City and does not confer any liability on the recipient of the stipend.
3. The City may not release or disclose to any person, including the successful design-build firm, the work product contained in an unsuccessful proposal.
4. The City shall return all copies of the proposal and other information submitted to an unsuccessful design-build firm.
5. The City or its agents may not make use of any unique or non-ordinary design element, technique, method or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal, unless the City acquires a license from the unsuccessful design-build firm.

**VI. Responsibilities of the City for Civil Works Design-Build Projects**

1. The City shall assume all risks and costs associated with the following:
  - a. Scope changes and modifications
  - b. Unknown or differing site conditions unless otherwise provided for in the RFP and final contract

- c. Regulatory permitting
  - d. Natural disasters and other natural events unless otherwise provided for in the RFP and final contract
2. The City shall be responsible for all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement of work area associated with staging or construction for the project.

## **VI. Post Selection Procedures for Facility and Civil Works Design-Build projects**

### **A. Responsibilities of the Design-Build Firm**

1. Following selection and contract award, the chosen firm will complete the design and submit all design elements to the City or its assigned representative for review and determination of scope compliance.
2. The selected firm shall submit an appropriate licensed design professional signed and sealed set of construction documents for the project before the documents are released for construction.
3. The design-build firm shall deliver the performance or payment bond no later than the 10<sup>th</sup> day after the firm executes the contract unless the firm furnishes a bid bond or other financial security acceptable to the City to ensure that the firm will provide the required performance and payment bonds before construction commences.
4. The firm shall supply an appropriate licensed design professional signed and sealed set of as-built construction documents for the project to the City at the conclusion of construction.